THE HON'BLE SRI JUSTICE V.ESWARAIAH

W.P.NO.24044 OF 2005

Dt.10.11.2005

Between:

M/s.D.B.K.Traders, Gadwal, rep. by its

Prop. D.Venkataramulu … Petitioner

And

The Joint Collecltor, Mahabubnagar,

Mahabubnagar District and another … Respondents

ORDER:

Heard the learned counsel for the petitioner as well as the learned Government Pleader for Civil Supplies on behalf of the respondents.

The petitioner is a kerosene dealer in the name and style as “M/s.D.B.K.Traders Wholesale Kerosene Dealer, Gadwal” and on the allegation that it is indulging in clandestine business of PDS kerosene by unloading the stocks from one tanker to another tanker without obtaining prior permission from the competent authority and accordingly the licence bearing No.1/90 was suspended pending action under Clause 28(1) of the A.P.Petroleum Products (L&RS) Order 1980 (hereinafter referred to as ‘the Order 1980’) by the Joint Collector, Mahabubnagar, vide his proceedings No.CS1/198/2005

dated 3.3.2005. Aggrieved by the same, the petitioner filed an appeal before the Director of Civil Supplies, A.P., Hyderabad on 30.3.2005 under Clause 31(1) of the Order 1980. Pending disposal of the appeal, the petitioner also filed W.P.No.8748 of 2005 wherein the suspension of the dealership licence of the petitioner pending enquiry under Clause 28(1) of the Order 1980, was suspended by order dated 6.6.2005. Thereafter, the said W.P.8748 of 2005 was dismissed on 23.8.2005 holding that the petitioner cannot be permitted to avail remedies simultaneously one provided under the statute and the other under the Constitution. The petitioner has rightly approached the appellate authority by filing the appeal and that the writ petition is not maintainable. However, the appellate authority was directed to pass appropriate orders within two weeks from the date of receipt of a copy of the order. Pursuant to the said order, the 2nd respondent heard the petitioner and gave prima facie opinion that the petitioner has contravened the provisions of Order 1980. In the instant case, the Revenue Divisional Officer, Gadwal reported that a vehicle bearing No.AP 02V 2519 arrived from IOC Gunthakal, carrying PDS kerosene oil pertaining to the petitioner and a quantity of 8430 liters was found being unloaded into another tanker bearing No.AP 22 9966 at about 11.30 p.m., on 26.2.2005, without obtaining permission from the competent authority. No convincing reasons were shown by the petitioner for such unauthorized unloading and the said incident was also witnessed by the police and the press and both the vehicles were seized under the cover of panchanama. The appellate authority, having regard to the facts and circumstances of the case and the latest Division Bench judgments of this Court in *Gummadisetti v. Joint Collector, Khammam,* dismissed the appeal on the ground that under Clause 28(1) of the Order, 1980 the licensing authority can suspend the licence pending action and the licensee has not obtained prior permission from the concerned authorities for shifting the stocks from one tanker to another tanker.

The learned counsel for the petitioner submits that the learned single Judge of this Court in *Narasimha Oil Supplies, IOC, Nidadavolu, West*

Godavari District v. Joint Collector, West Godavari allowing W.P.Nos.10512, 10517 and 11946 of 1997 in respect of suspension of licence under Clause 28 (2) without their being any action initiated under Clause 28(1) of the Order, 1980 which was also confirmed by the Division Bench in W.A.No.1342 of 2003 holding that no action was initiated and pending under Clause 28(1) of the Order, 1980 and when no show cause notice has been issued the suspension of licence is illegal.

The learned counsel for the petitioner fairly brought to my notice that the later Division Bench of this Court in the case of *Gummadisetty v. Joint Collector, Khammam* (supra 1) overruled the judgment of the learned single Judge in W.P.Nos.10512, 10517 and 11946 of 1997 dated 9.1.2003 which was confirmed by another Division Bench holding that it is always open for the licensing authority to initiate action under sub-clause (1) of Clause 28 of the Order, 1980. However, unless an action is contemplated or conceived against the licensee under sub-clause (1) of Clause 28, no order could be made under sub-clause (2) of Clause 28 of the Order 1980. Thus it is clear that when action is conceived or contemplated under sub-clause (1) of Clause 28, it is open for the licensing authority to suspend the licence. The learned counsel also relied on the judgment of the Division Bench of this Court in *A.Srirama Murthy v. Joint Collector, Visakhapatnam* wherein it was held that the suspension of licence even before the initiation of action for cancellation or suspension is illegal and if initially an order was passed without jurisdiction it cannot be treated as valid when the action is initiated under Clause 28(1) later on.

I am bound to follow the latest Division Bench judgment of this Court in the case of *Gummadisetti v. Joint Collelctor, Khammam* (supra 1) wherein the relevant provisions were thoroughly discussed before arriving the conclusions.

The learned counsel for the petitioner submits that though the licence was suspended pending action under Clause 28(1) by order dated

3.3.2005, no show cause notice has been issued and therefore the said suspension of the licence is illegal and arbitrary which amounts to penalizing the petitioner. It is further stated that the proceedings under Section 6-A of the Essential Commodities Act have not also been finalized and no action has been taken either for final suspension or cancellation of the dealership.

Having regard to the facts and circumstances of the case, the first respondent is directed to complete the proceedings under Clause 28(1) of the Order, 1980 within four weeks from the date of receipt of a copy of this order. If the said proceedings are not finalized within the said period, the suspension order stands automatically revoked and the petitioner shall be permitted to carry out the said business.

The writ petition is accordingly disposed of. No costs.

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(V.ESWARAIAH, J.)

10.11.2005

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